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APPENDIX

Supreme Court of The United States

OCTOBER TERM, 1967

No. 639

MINNIE BRADE GLONA,
PETITIONER

versus

AMERICAN GUARANTEE & LIABILITY
INSURANCE COMPANY, ET AL

On Writ of Certiorari to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR CERTIORARI FILED SEPTEMBER 20, 1967
CERTIORARI GRANTED DECEMBER 4, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 639

MINNIE BRADE GLONA,
PETITIONER

versus

AMERICAN GUARANTEE & LIABILITY
INSURANCE COMPANY, ET AL

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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UNITED STATES DISTRICT COURT

Division B

Docket No. 15974

DOCKET ENTRIES

Mrs. Minnie Brade Glona

versus

American Guarantee & Liability Insurance Company and Henry O. Mac Donell

FOR PLAINTIFF:

MARVIN C. GRODSKY
LEONARD J. FAGOT
WILLIAM F. WESSEL
1605 National Bank of Commerce Building

FOR DEFENDANT:

MARGOT MAZEAU
NORMANN & NORMANN.
1605 Hibernia Bank Building
524-7604

Date	Filings and Proceedings
9/28/65	Flg. complaint. Issg. 2 summons.
12/27/65	Flg. motion of Defts. for summary judgment; notice, joint stipulation and memo attached.
6/22/66	Hearing and ORDER that motion of Defts. for summary judgment be, GRANTED. Ent. 6/24/66. Issg. notice.
6/24/66	JUDGMENT in favor of Defts. and against Pltf. dismissing Pltf's. suit with costs. Ent. 6/24/66. Issg. notice.

APPELLATE PROCEEDINGS

7/22/66	Flg. notice of appeal by Pltf.
8/26/66	Record forwarded to Court of Appeals.
7/27/67	Flg. Mandate from Court of Appeals; Judgment affirmed, Etc.
10/27/66	Docketing Cause, etc.
11/ 1/66	Flg. Appearance for Appellee.
1/ 3/67—	Flg. Three Xerox Copies of the Record. (FOR USE OF COURT). (SEND TO PANEL)
2/17/67	Flg. Brief on Behalf of Mrs. Minnie Brade Glona, Appellant with c/s (20 mimeo copies).
3/14/67—	Flg. Original Brief on Behalf of Appellees, American Guarantee & Liability Insurance Company and Henry O. Mac Donell c/s (20 printed copies)
4/ 4/67	Assigned for June 12, 1967 at New Orleans
6/12/67	Entg. Argument & Submission Before Hons. Rives, Dyer CJs. & Johnson DJ.
6/22/67	Affirmed "Per Curiam" (FMJ)
7/17/67	Judgment as mandate issued to Clerk, N. O., La.
9/14/67	Preparing & Certifying proceedings on Certiorari.
9/25/67	Flg. Notice (P. C.) of Clerk of S. C. as to the filing Petition for Certiorari.
12/. 8/67	Flg. Order of S. C. Granting certiorari and that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 1]

COMPLAINT FOR DAMAGES

Filed: Sep. 28, 1965

United States District Court
Eastern District of Louisiana
New Orleans Division

No. 15,974
Civil Action — Division B

Mrs. Minnie Brade Glona

versus

American Guarantee & Liability Insurance Company
and Henry O. Mac Donell

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA:

The complaint of Mrs. Minnie Brade Glona does with respect aver:

I.

That plaintiff is a citizen of and resident of the State of Texas, that defendant American Guarantee & Liability Insurance Company is a foreign insurance com-

pany domiciled in the State of New York, having qualified to and doing business in this jurisdiction, and that defendant Henry O. Mac Donell is a citizen and resident of this state and jurisdiction; further that

The amount in controversy exceeds, exclusive of costs and interest, the sum of $10,000.00.

II.

That Bill E. Brade also known as Billy Glona was plaintiff's child and was, on September 15, 1964, the driver of an automobile stopped for traffic preceding him at the intersection of Gentilly Boulevard and Franklin Avenue, City of New Orleans, when an automobile owned and being driven by defendant Henry O. Mac Donell and liability-insured by defendant American Guarantee and Liability Insurance Company, suddenly, and without warning or cause [fol. 2] was forcefully driven into and struck the rear of the Glona vehicle, propelling it into the vehicle ahead.

III.

The said accident was caused by the reckless and negligent driving of defendant Mac Donell in failing to keep a proper lookout, following too close, speeding, and failing to maintain proper control over his vehicle and in violation of the provisions of MCS 828, Traffic Ordinance of the City of New Orleans, 1956, as amended and of the laws of the State of Louisiana, both of which are specially pleaded as if repeated in extenso.

IV.

In said accident Billy Glona was caused to strike his head on a portion of his automobile, sustaining a cerebral contusion resulting in his death on October 2, 1964. Decedent was, at the time of his death, 19 years old; having never married and leaving no children.

V.

Complainant avers damages as follows: Surviving claim of Billy Glona, $200,000.00; losses by complainant, $25,000.00.

WHEREFORE, plaintiff Mrs. Minnie Brade Glona demands judgment against American Guarantee & Liability Insurance Company and Henry O. Mac Donell, jointly and solidarily, in the sum of $225,000.00, legal interest and costs.

LEONARD J. FAGOT,
WILLIAM F. WESSEL, and
MARVIN C. GRODSKY,
Attorneys for Complainant.

(Signed) MARVIN C. GRODSKY
MARVIN C. GRODSKY,
Trial Attorney
1605 N.B.C. Bldg.,
New Orleans, Louisiana
523-6421

Marshall, please serve:

1. Am. Guar. & Lia. Ins. Co.
   thru: Secty. of State
2. Henry O. Mac Donell
   4433 Fiesta Drive
   New Orleans, Louisiana 70114

[fol. 5]

MOTION FOR SUMMARY JUDGMENT

(Number and Title Omitted)

Filed: Dec. 27, 1965

Defendants, AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY and HENRY O. MAC DONELL, move the Court to enter, pursuing to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in defendants' favor dismissing the action on the ground that there is no general issue as to any material fact and that the defendants are entitled to a judgment as a matter of law.

NORMANN & NORMANN
Attorneys for defendants
1605 Hibernia Bank Building
New Orleans, Louisiana 70112
524-7604
(Signed) MARGOT MAZEAU
MARGOT MAZEAU,
Trial Attorney

NOTICE OF MOTION

TO: Marvin C. Grodsky, Trial Attorney
1605 National Bank of Commerce Bldg.
New Orleans, Louisiana

PLEASE TAKE NOTICE that undersigned counsel will bring the foregoing Motion for Summary Judgment on for hearing before the United States District Court for the Eastern District of Louisiana, as soon as counsel can be heard, in the Federal Courts Building at 400 Royal Street in the City of New Orleans.

NORMANN & NORMANN
Attorneys for defendants
524-7604
(Signed) MARGOT MAZEAU
MARGOT MAZEAU,
Trial Attorney

[fol. 6]

JOINT STIPULATION

(Number and Title Omitted)

IT IS STIPULATED by and between counsel representing plaintiff and defendants, respectively, that Billy Glona was an illegitimate child, that his father was someone other than Otto W. Glona, and further, that his mother, the plaintiff herein, was not married at the time of the conception, or date of birth of said Billy Glona.

New Orleans, Louisiana, this 22 day of December, 1965.

LEONARD J. FAGOT,
WILLIAM F. WESSEL, and
MARVIN C. GRODSKY,
Attorneys for Complainant
(Signed) MARVIN C. GRODSKY
MARVIN C. GRODSKY,
Trial Attorney
1605 N.B.C. Bldg.
New Orleans, Louisiana

NORMANN & NORMANN
1605 Hibernia Bank Building
New Orleans, Louisiana
Attorneys for Defendants
(Signed) MARGOT MAZEAU
MARGOT MAZEAU

[fol. 13]
MINUTE ENTRY:
June 22, 1966
HEEBE, J.

(Number and Title Omitted)

This cause came on this day for hearing on motion of defendants for summary judgment.

PRESENT: William Wessel, Esq.
Attorney for Plaintiff

Mrs. Margot Mazeau,
Attorney for Defendants

Counsel for defendants presented a supplemental memo to the Court.

IT IS ORDERED BY THE COURT that motion of defendants for summary judgment be, and the same is hereby, GRANTED.

[fol. 14]

JUDGMENT

Filed: Jun. 24, 1966

United States District Court
Eastern District of Louisiana
New Orleans Division
Division "B"

No. 15,974
Civil Action

Mrs. Minnie Brade Glona

versus

American Guarantee & Liability
Insurance Company and
Henry O. Mac Donell

The Court having, on June 22, 1966, granted the motion of defendants for summary judgment;

ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, American Guarantee & Liability Insurance Company and Henry O. Mac Donell, and against the plaintiff, Mrs. Minnie Brade Glona, dismissing said plaintiff's suit with costs.

Dated at New Orleans, Louisiana on this 24 day of June, 1966.

(Signed) A. DALLAM O'BRIEN, JR.
A. DALLAM O'BRIEN, JR.
CLERK

[fol. 15]

NOTICE OF APPEAL

Filed: Jul. 22, 1966

United States District Court
Eastern District of Louisiana
New Orleans Division

Mrs. Minnie Brade Glona

No. 15974
versus Civil Action
Division "B"

American Guarantee & Liability
Insurance Company, and Henry O. Mac Donell

Notice is hereby given that MRS. MINNIE BRADE GLONA, plaintiff above named hereby appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment on Motion for Summary Judgment in favor of defendants AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY, and

HENRY O. MAC DONELL, entered in this action on June 24, 1966.

LEONARD J. FAGOT,
WILLIAM F. WESSEL, and
MARVIN C. GRODSKY
(Signed) WILLIAM F. WESSEL
WILLIAM F. WESSEL
Attorneys for Plaintiff
1605 National Bank of
Commerce Building
New Orleans, Louisiana
523-6421

CERTIFICATE

I certify that a copy of the above and foregoing Notice of Appeal has been forwarded to (Mrs.) Margot Mazeau, Normann & Normann, Attorneys for defendants, this 22 day of July, 1966.

(Signed) WILLIAM F. WESSEL
WILLIAM F. WESSEL

[fol. 17]

EXCERPT OF TRANSCRIPT

In The United States District Court
For the Eastern District of Louisiana
New Orleans Division

Mrs. Minnie Brade Glona
vs. Civil Action 15974
American Guarantee & Liability Insurance
Company, Et Al

APPEARANCES:

WILLIAM F. WESSEL, Esq.
National Bank of Commerce
Building
New Orleans, Louisiana
Attorney for Plaintiff

MARGOT MAZEAU
NORMANN & NORMANN
Hibernia Building
New Orleans, Louisiana
Attorneys for Defendants

— — — —

(The above entitled and numbered matter came up for hearing on this, the 22nd day of June, 1966, in the Courtroom, 400 Royal Street, New Orleans, Louisiana; THE HONORABLE FREDERICK J. R. HEEBE, presiding.)

[fol. 18]

PROCEEDINGS

THE COURT:

Civil Action Number 15974, Mrs. Minnie Brade Glona versus American Guarantee & Liability Insurance Company, et al.

(Argument by Mrs. Mazeau and Mr. Wessel.)

MRS. MAZEAU:

For the purpose of this Motion for Summary Judgment only, we admit that the child was informally acknowledged; however, the child was at no time legitimated. So, for the purposes of this argument, and according to the stipulation which we have filed, this deceased was an illegitimate child. . . . . .

REPORTER'S CERTIFICATE

The undersigned certifies in his official capacity of Court Reporter for the United States District Court, Eastern District of Louisiana, the foregoing to be a true and correct transcription of his Stenograph notes taken during the proceedings in the above-numbered and titled case, on the 22nd day of June, 1966.

(Signed) VIDAL G. APODACA
Vidal G. Apodaca
Official Court Reporter
United States District Court

[fol.]

In The
United States Court of Appeals
For the Fifth Circuit

No. 24,181

Mrs. Minnie Brade Glona,

Appellant,

versus

American Guarantee & Liability Insurance Company, Et Al.,

Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(June 22, 1967.)

Before RIVES and DYER, Circuit Judges, and JOHNSON, District Judge.

PER CURIAM: This suit was instituted in the United States District Court for the Eastern District of Louisiana by the plaintiff, Mrs. Minnie Brade Glona, a resident of Texas, who sues the defendants, American Guarantee & Liability Insurance Company and its insured, a resident of Louisiana, to recover for the wrongful death of her son, who died as a result of an

automobile accident which occurred in the city of New Orleans in September, 1964. Defendants filed a motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, on the ground that the plaintiff's deceased son, although informally recognized by the plaintiff, was her illegitimate son and that, therefore, plaintiff had no cause of action for his death.[1]

Plaintiff, in opposition to the motion for summary judgment, acknowledged that under the Louisiana law she had no right of action for the death of her illegitimate child but urged that to so restrict Article 2315 of the Louisiana Civil Code violates the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States. Upon such submission, the District Court granted the defendants' motion for summary judgment.

Plaintiff argues for the first time on this appeal that the granting of the Rule 56 motion was erroneous for the reason that the laws of Texas should be applied in determining whether or not she has a right of action

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[1]The Civil Code of Louisiana, Article 2315, provides for the right of recovery for wrongful death in favor of "the surviving father and mother of the deceased, or either of them." The statute does not state "legitimate father" or "legitimate mother." The Louisiana courts have held that the words "mother," "children," and "father" have reference to survivors of legitimates. The decedent must be legitimate in order for an ascendant to recover. See *Vaughn v. Dalton-Land Lumber Co.*, 119 La. 61, 43 So. 926; *Jackson v. Lindholm*, 84 So. 2d 101 (C.A. Orl. 1955), and *Buie v. Hester*, 147 So. 2d 733 (2 C.A. 1962).

against defendants.[2] Plaintiff's theory that the law of Texas should be applied even though the injury and death occurred in Louisiana is that, by reason of plaintiff's domicile, Texas has a more significant relationship with the occurrence than Louisiana. Such an argument at this point is foreclosed. Upon being met with defendants' motion for summary judgment, plaintiff was authorized by Rule 56 to develop factually that the law of the domicile had a more significant relationship with the occurrence than the *lex loci delicti*. Plaintiff failed to do this, and such an issue was not raised upon the submission to the District Judge.

As to plaintiff's argument that the construction by the Louisiana courts of Article 2315, Civil Code of Louisiana, so restricts said provision that it violates the equal protection clause of the Fourteenth Amendment, this Court is clear to the conclusion that the Fourteenth Amendment does not prohibit States from classification but only prohibits classification upon an unreasonable basis. It cannot be said that the classification here by the Louisiana courts is unreasonable. *Morey v. Doud*, 354 U.S. 457.

The motion for summary judgment was properly granted, and the action of the District Court is

AFFIRMED.

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[2]The Texas wrongful death statute, Title 17 Vernon's Texas Civil Stat. Art. 4675, as the same has been construed by the Texas courts, would authorize an action such as plaintiff's for the wrongful death of her illegitimate son.

[fol.]

JUDGMENT

United States Court of Appeals
For the Fifth Circuit

October Term, 1966

No 24,181

D.C. Docket No. 15974-Civil Action Div. "B"

Mrs. Minnie Brade Glona,
Appellant,

versus

American Guarantee & Liability Insurance Company, Et Al.,
Appellees.

Appeal form the United States District Court for the Eastern District of Louisiana.

Before RIVES and DYER, Circuit Judges, and JOHNSON, District Judge.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Mrs. Minnie Brade Glona, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

June 22, 1967

Issued as Mandate: Jul. 17, 1967

[fol.]

SUPREME COURT OF THE UNITED STATES

No. 639, October Term, 1967

Minnie Brade Glona,

Petitioner,

v.

American Guarantee & Liability Insurance Company, et al.

Filed: Dec. 8, 1967

ORDER ALLOWING CERTIORARI. Filed December 4, 1967.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is placed on the summary calendar and set for oral argument immediately following No. 508.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

A true copy JOHN F. DAVIS
Test:
Clerk of the Supreme Court of the United States
By /s/ E. P. CULLINAN
Chief Deputy